

ESTTA Tracking number: **ESTTA702489**

Filing date: **10/15/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061787
Party	Plaintiff Dehner Distillery, LLC
Correspondence Address	TIMOTHY J ZARLEY ZARLEY LAW FIRM PLC 400 LOCUST STREET, SUITE 200 CAPITAL SQUARE DES MOINES, IA 50309-2350 UNITED STATES tzarley@zarleylaw.com
Submission	Motion for Default Judgment
Filer's Name	Timothy J. Zarley
Filer's e-mail	tzarley@zarleylaw.com
Signature	/Timothy J. Zarley/
Date	10/15/2015
Attachments	2015-10-15 - Motion for Default Judgment.pdf(123256 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No. **4,715,638**

For the mark **RED BOOT**

Date registered **April 7, 2015**

DEHNER DISTILLERY, LLC,	:	
	:	Cancellation No. 92061787
Petitioner,	:	
	:	Reg. 4,715,638
v.	:	
	:	Mark: RED BOOT
ALLIED LOMAR, INC.,	:	
	:	
Registrant.	:	
	:	

MOTION FOR DEFAULT JUDGMENT FOR FAILURE TO ANSWER

Petitioner, Dehner Distillery, LLC (hereinafter “Petitioner” or “Dehner”), by and through its attorney, and in support of its Motion for Default Judgment for Failure to Answer against Registrant Allied Lomar, Inc.’s (hereinafter “Registrant” or “Allied Lomar”), Petitioner states as follows:

1. On July 10, 2015, Petitioner filed its Petition for Cancellation.
2. On July 10, 2015, Petitioner served Registrant by U.S. First Class Mail and by email.
3. On July 13, 2015, the Board set a deadline to Answer by Saturday, August 22, 2015, which pursuant to Trademark Rule 2.196 could be filed Monday August 24, 2015.
4. On August 17, 2015, Registrant, through counsel, filed for an Extension of Answer or Discovery or Trial Periods with Consent if 30 days, thereby requesting the deadline to

Answer be set for Monday, September 21, 2015.

5. On August 17, 2015, the Board granted Registrant's Motion to Extend and reset the dates as set forth in Registrant's motion.

6. To date, nearly 100 days since the service of the Petition, no response has been filed by Registrant.

7. Registrant has not contacted Petitioner to ask for an extension to file an Answer, nor has Registrant made any contact with Registrant or the Board since its Motion to Extend was granted thereby delaying Petitioner's relief.

8. Pursuant to TBMP § 508 and the standards of Federal Rule of Civil Procedure Rule 55, Petitioner may file a Motion for Default Judgement for Failure to Answer within the time prescribed.

9. Petitioner requests the Board enter a Judgment by Default based on Registrant failure to timely file its Answer under TBMP § 312 and 37 C.F.R. § 2.114(a).

10. Petitioner requests that U.S. Trademark Registration No. 4,715,638 be cancelled as Registrant has not and did not make a bona fide use of the mark prior to filing.

WHEREFORE, Petitioner respectfully requests that the Board grant this Motion and enter Default Judgment in favor of Plaintiff.

Respectfully submitted,

Dated: October 15, 2015

/Timothy J. Zarley/
Timothy J. Zarley, Reg. No. 45,253
ZARLEY LAW FIRM, P.L.C.
Capital Square
400 Locust, Suite 200
Des Moines, IA 50309-2350
(515) 558-0200 Telephone
(515) 558-7790 Facsimile
E-mail: tzarley@zarleylaw.com
Website: www.zarleylaw.com

CERTIFICATE OF MAILING AND SERVICE

I certify that on October 15, 2015, the foregoing PETITION FOR CANCELLATION is being electronically filed via the ESTTA on-line filing process.

I further certify that on October 15, 2015, the foregoing PETITION FOR CANCELLATION was served upon the Registrant by mailing a true and complete copy thereof by U.S. First Class Mail, postage prepaid and via e-mail transmission to:

Michael D. Kanach
Gorden & Rees LLP
275 Battery Street
Suite 2000
San Francisco, CA 94111

E-mails:

mkanach@gordonrees.com

randris@gordonrees.com

kshaw@gordonrees.com

/Timothy J. Zarley/

Timothy J. Zarley, Reg. No. 45,253